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DEPT OF TRANSPORTATION
DOCKETS

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U.S. Department of Transportation
Docket Operations
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001



Subject: **Petition for Amendment to Exemption
9749, Exemption from §§ 25.785(j),
25.807(d), 25.807(g)(1), 25.807(i)(1),
25.810(a)(1), 25.812(e), 25.813(b),
25.857(e), and 25.1447(c)(1) of Title 14,
Code of Federal Regulations, to Allow
Main Deck Class E Access During
Flight While Carrying Mixed Cargo,
767-200 SF. (PS05-0036)**

Model: 767-200
FAA Project PS05-0036
No.:

References:

- a) FAA Exemption Number 9749, Grant of Exemption from §§ 25.785(j), 25.807(d), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.813(b), 25.857(e), and 25.1447(c)(1) of Title 14, Code of Federal Regulations, 767-200 SF.
- b) FAA Exemption Number 9696A, Partial Grant of Exemption from §§ 25.785(j), 25.807(d), 25.807(g)(1), 25.807(i)(1), 25.809(a), 25.810(a)(1), 25.812(e), 25.813(b), 25.857(e) and 25.1447(c)(1) of Title 14, Code of Federal Regulations, 767-300BCF

Branch/Panel ANM-150S & ANM-113
No.:
Branch/Panel Cabin Safety & TAD
Name:
Response Due: May 29, 2009

This letter is to submit:

- (X) This letter submits a Petition for Amendment to the reference (a) Exemption No. 9749, Exemption from §§ 25.785(j), 25.807(d), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.813(b), 25.857(e), and 25.1447(c)(1)

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to allow main deck Class E cargo compartment access during flight while carrying mixed cargo, i.e. live animals and other unrelated cargo.

Boeing is herein petitioning for amendment to the requirements levied in Exemption 9749, to extend limits for main deck Class E cargo compartment supernumerary access to include access for mixed cargo. This request is based on the precedence of multiple prior exemptions granted by the FAA for similar aircraft types which allow access for mixed cargo. In particular, the additional relief being requested is identical to that granted for the 767-300BCF by the reference b) Exemption 9696A.



This letter is being sent for:

(X) Regulatory Review/Approval

Background

The Boeing Company has been granted an exemption from 14 CFR 25.785(j), 25.807(d), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.813(b), 25.857(e), and 25.1447(c)(1) to the extent necessary to allow type certification of Boeing Model 767-200 passenger airplanes converted to freighter airplanes, with provisions for the carriage of supernumeraries. Exemption No. 9749 was issued with allowance for supernumerary access to the main deck Class E cargo compartment for cargo that needs special attention during flight. This exemption, however, is subject to conditions and limitations.

Key existing conditions and limitations of Exemption 9749 that Boeing is requesting be modified:

2. Main Deck Class E Cargo Compartment Access Limitations:

b. Access into the main deck Class E cargo compartment in flight is allowed for only two types of operation. They are:

- Operations for carriage of live animals and material to support the safe transport of the animals, no other cargo. The maximum number of supernumeraries allowed in the cargo compartment in flight is 4.
- Operations for cargo only, no live animal carriage. The maximum number of supernumeraries allowed in the cargo compartment in flight is 3.

Supporting Information

In order to better understand the existing jet cargo fleet operations from a mixed cargo perspective, Boeing conducted a survey of a number of freighter operators. The survey requested responses from a sample set of worldwide operators (inclusive of US operators), and the survey questionnaire centered on the following questions:

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1. Do you transport large, live animals? If so, provide examples.
2. Do you transport them on scheduled cargo flights? If so, provide quantities and examples.
3. On scheduled flights, do you carry other cargo with the animals?
Do you have any internal restrictions?
4. Do you transport animals on chartered or dedicated cargo flights? If so, provide quantities and examples.
5. On chartered or dedicated flights, do you carry other cargo with animals?
If so, what types?
6. Would it be a hardship to your airline if main deck access for mixed cargo operations is prohibited?
7. With no large animals being carried, is three (3) supernumeraries an acceptable maximum number to be inside the compartment at the same time?

The summary of responses from the operators is as follows:

Mixed Cargo Flights are the Norm in the Industry

All airlines that we queried, except one, advised us that they routinely carry large live animals requiring care/attention during flight in combination with other cargo. (The one exception is an airline in the domestic small package business and they do not accept live animals for carriage on scheduled flights.) One operator reported that they have ~30 flights per month of this type. On some routes, such as into and out of Calgary, Alberta, 100% of the cargo flights for one operator are of the mixed cargo type. One of the queried operators stated that... *"100% of live animal flights have other cargo in the same compartment"*. Two other operators stated that *"99% of cargo flights with live animals carry other cargo in the same compartment"*. Another operator advised that depending on the season, the frequency of carrying mixed cargo varies from *"every flight"* to *"once every fourteen days"*. Clearly, cargo operators carry mixed cargo on a regular basis and such capability/flexibility is needed by the shippers of large, live animals.

Not Allowing Access for Mixed Cargo on the 767-200 SF will Create a Hardship

All airlines which accept live animals for carriage on scheduled flights responded that if mixed cargo access were not allowed it would create financial hardship for their operations. Most stated that it would effectively stop large, live animal shipment by air on scheduled flights. Two airlines stated that the cost of shipping horses by air would skyrocket if mixed cargo were not allowed because the horse shipper would, in effect, have to pay for the empty pallet positions not filled because mixed cargo access would not be allowed.

Not allowing access for mixed cargo operations would necessarily drive cargo operators to ship horses (and other large live animals) exclusively on dedicated/chartered flights. Such flights would have to be scheduled far in advance and they would likely be infrequent due to limited traffic, creating cost and schedule hardship to horse shippers due to the relative infrequent flights. Race horses, typically shipped by air, are shipped a day or two prior to their races



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because horses are prone to jet lag and their performance suffers as a result. Infrequent dedicated/chartered flights for horse carriage would be a hardship to the horse racing industry.

Not allowing mixed cargo access would very likely create an additional and extreme hardship to the US cargo fleet, one that places them at a competitive disadvantage to their foreign counterparts. Airlines not under US jurisdiction would most likely pursue certifying mixed cargo access through their own regulatory authorities. If successful, these airlines would cause US carriers to be at a severe disadvantage. The foreign carriers would be able to economically ship smaller quantities of horses on a particular flight while US carriers would not be able to do likewise. US carriers would have no choice but to ship much larger quantities of horses much less frequently in order to fill their main deck cargo compartments.



Additional Supporting Information

With minor exception, all large live animals being shipped by air need persons (grooms/handlers) on board for their care/attention during flight and to also ensure that the animals will not compromise safe flight.

Large animals may need special attention in flight for their safety and well being. Handlers need to have the ability in flight to calm horses down so they will not try to jump and hurt themselves. Whales or other large marine animals need handlers capable of keeping them in a wet environment while in flight. Large animals in these categories represent a high value. From the shippers' side as well as from the airlines' perspective, having grooms/handlers on board and being able to attend to them during flight is a must. It is also imperative that a sufficient quantity of grooms be allowed inside the compartment at the same time. During flight these grooms assist in maintaining a safe environment and help to adequately protect the animal owners' investments.

The quantities of large animals (horses) typically being carried in mixed cargo operations varies from one or two stalls holding two to six horses all the way up to the main deck being almost completely full with these stalls. If the number of horse stalls does not completely fill the main deck compartment, other cargo is routinely loaded into the available pallet positions as long as the combination of large animals and other cargo is in accordance with IATA guidelines. Most respondents advised that they follow IATA guidelines for live animal carriage, meaning that they separate the live animals from certain dangerous goods that may be harmful to the large animals (horses) if they were placed too close.

In order to safely transport large live animals by air, cargo airplane operators (in combination with the shippers) need the flexibility to determine for themselves the proper number of grooms/handlers to accompany the large animals without being unduly restricted by an AFM limitation that limits main deck access to a few individuals. Although a main deck compartment may not be fully loaded with large animals on a particular flight, it may be the decision of the carrier (in combination with the shipper) that the number of grooms that should accompany the large animals (horses) is the same as the maximum number of supernumeraries allowed to be carried on that model.

Additional Item to Consider

In order to avoid confusion and to avoid a potentially more restrictive limitation than that intended by the FAA, Boeing suggests that use of the terms "*live animals requiring care/attention during flight*" and "*live animals requiring care/attention carriage*" replace "*live animals*" and "*live animal carriage*". Use of these terms would eliminate from consideration certain types of live animals that do not require care/attention during flight (e.g., day-old chicks, tropical fish, etc.). It does not appear that it was the FAA's intention to include these smaller animals in its determination that only three (3) persons may be inside the compartment for 'Cargo Only, No Live Animals' operations.



Petition for Amendment to Exemption No. 9749:

Boeing is seeking the following revisions to the existing Exemption No. 9749:

- Addition to "types of cargo operations":

Boeing requests revision to the FAA's analysis/summary to additionally recognize mixed cargo as a typical type of operation needed by airlines requiring access to the main deck Class E cargo compartment during flight.

- Carriage of live animals, requiring care/attention during flight, and cargo. The maximum number of supernumeraries allowed in the cargo compartment is 4.
 - b. Access into the main deck Class E cargo compartment in flight is allowed for only three types of operation. They are:
 - Carriage of live animals requiring care/attention during flight and associated material only, no other cargo. The maximum number of supernumeraries allowed in the cargo compartment in flight is 4.
 - Cargo only, no live animal requiring care/attention during flight. The maximum number of supernumeraries allowed in the cargo compartment in flight is 3.
 - Carriage of live animals, requiring care/attention during flight, and cargo. The maximum number of supernumeraries allowed in the cargo compartment is 4.

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- Specific Revision to Animal Nomenclature:

In order to avoid confusion and to avoid a potentially more restrictive limitation than that intended by the FAA, if the FAA decides to maintain definitive descriptions of cargo operation types, Boeing suggests that use of the terms "*live animals requiring care/attention during flight*" and "*live animals requiring care/attention carriage*" replace "*live animals*" and "*live animal carriage*". Use of these terms would eliminate from consideration certain types of live animals that do not require care/attention during flight (e.g., day-old chicks, tropical fish, etc.).



Evaluation of Public Interest

Based upon the responses of Boeing's customers/operators and the original request to provide an exemption for in-flight Main Deck access for mixed cargo operations, Boeing would like the FAA to reconsider their position and find that it is in the public interest to provide an exemption for in-flight Main Deck Class E access for mixed cargo operations. The rationale is as follows:

- It is not economical to dispatch a cargo airplane with less than a full load. Operators of the 767-200 SF wish to routinely transport types of cargo that require care and/or inspection during flight (e.g. large live animals and/or hazardous materials). The effect of the current AFM limitations prohibiting supernumerary access into the main deck cargo compartment during flight limits the type of cargo that can be carried, creating hardships for these operators. If access is not allowed for mixed cargo operations, shipping rates would necessarily be higher due to the inefficiency of partially loaded cargo compartments. Whole categories of live animal carriage commerce such as medical evacuation, shipment of horses for race, show, sale or breeding may be regulated out of existence by this restriction. The public interest is served by allowing live animal carriage commerce to continue to exist in a viable form.
- As stated above, cargo operators routinely carry all types of cargo including mixed cargo and approving main deck access for such operations of a 767-200 SF will improve cargo carrying efficiency. Additionally, common operating requirements and common FAA Exemption allowances for manufacturers will tend to reduce the airlines' operating and asset costs through market competition. This will tend to reduce overall air freight rates, as competitive pricing structures among freight operators will be promoted; the public interest is served by lower freight rates and competitive pricing.

Request to operate under this exemption outside the United States.

Per the requirements of § 11.83, Boeing requests that the relief granted by this exemption remain in effect for operations outside of the United States. As a long range freighter aircraft, the 767-200 SF will be used for international flights including flights between points outside of the United States.

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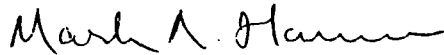
Request for Waiver of Publication

Boeing requests a waiver for the publication and comment period of this exemption, similar to those granted to other applicants for the same operational capability. Boeing believes that good cause exists to waive the publication and comment requirements of FAR 11.85, 11.87 and 11.89. Boeing further believes that the additional relief requested by this petition is identical to exemptions granted previously.

Boeing has filed its petition in a timely manner. This petition, if delayed, would adversely affect the 767-200 SF program. The first 767-200 SF was redelivered to the customer in January 2009. Prompt action on this petition would be greatly appreciated.

Please contact this office or Bernard Davidson at (425) 717-3724 if you have further questions.

Sincerely,



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Name	Letter	Enclosures	Comments
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John Sheldon	EDT	EDT	ANM-115
Meghan Gordon	EDT	EDT	ANM-113